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April 5, 2001

Hand Delivery

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

APR 6 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Re: EX PARTE -- CC Docket No. 01-9: Application of Verizon Pursuant to
Section 271 of the Telecommunications Act of 1996 to Provide InterLATA
Services in Massachusetts

Dear Ms. Salas:

This written *ex parte* communication is submitted in connection with the Commission's review of the above-referenced application by Verizon to provide in-region, interLATA services in Massachusetts.

The Verizon Massachusetts application places the Federal Communications Commission at a crossroads. If the Commission simply ratifies the switching rate relied on by Verizon in its current application, it will send a clear message to all Bell Operating Companies (BOCs) with pending and future 271 proceedings that the FCC will no longer require a BOC's UNE prices for switching to comply with applicable precedent on proper TELRIC pricing. On the other hand, if the FCC makes clear that a \$10 rate cannot be squared with TELRIC principles, it will send a clear message that the FCC will continue to ensure that the rates established for unbundled network elements comply with statutory requirements.

It bears emphasis that the rates for unbundled switching proposed by Verizon in this application are not the rates that the Massachusetts Department of Telecommunications and Energy (DTE) devised. Although Verizon initially filed the DTE-set rates in support of its application, it subsequently abandoned its reliance on those rates, implicitly conceding that the rates could not pass muster under section 271. Verizon then chose to adopt the "New York" switching rate for its Massachusetts application. But Verizon did not actually adopt the "New York" rate because that rate was established by the New York Public Service Commission (PSC) subject to refund and is expected to be revised within the next 90 days after the PSC completes its review of additional information concerning the cost of unbundled switching. In other words,

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the rate currently being assessed in New York is a placeholder until the New York commission reaches a decision in its pending proceeding.

Moreover, since acting on the Verizon New York application, the FCC has acquired substantial additional information about the pricing of switching generally and the importance of using an appropriate switch vendor discount in particular – information that shows that a switching rate of \$10.50 is excessive and inconsistent with TELRIC principles. Specifically, the Commission approved switching rates in subsequent 271 applications that all were substantially lower than the New York rate – Texas at \$4.17, Kansas at \$4.23, and Oklahoma at \$5.47.¹ The FCC also is aware from the record developed in the Texas state proceeding that the switch vendor discount used by that state PUC was approximately 70%, much larger than the discount used in New York. Furthermore, after the initial refusal by Verizon to allow the Commission to see the size of the New York switch discounts which are on the record in the current New York proceeding, Verizon today agreed that WorldCom may provide this information under seal to the Commission. Accordingly, WorldCom will today submit this information in a separate proprietary *ex parte* submission.

It would be entirely arbitrary to conclude, as Verizon would have the FCC do, that switching can cost both \$4.17 and \$10.50. Certainly more than a 100% differential could not be within the range of TELRIC intended by the FCC. Finally, the synthesis model that the FCC developed in its universal service proceeding (and completed late in 1999) relies only on large initial switch vendor discounts and expressly rejects reliance on switch growth discounts.²

Since the FCC reviewed the New York application, state commissions in Texas, Kansas, and Oklahoma have found – and the FCC has affirmed – that the proper discount to be used in calculating the rate for unbundled switching is the new switch discount -- the very substantial discount that a BOC typically receives when it purchases a new switch. And, a federal district court similarly has held that state commissions must use the new switch discount in arbitrating unbundled switching rates.³ Moreover, the New York commission is actively reviewing its initial approval of the \$10.50 switching rate, because it concluded that Verizon had misled the state commission in its prior cost proceeding with respect to the proper switch vendor discount. Indeed, the New York commission was sufficiently concerned about the reasonableness of the current rate that it made the placeholder rate subject to refund so that competitors would not suffer permanent damage if the Commission subsequently revised the rate downward.

¹ See attached page comparing UNE pricing in various states from WorldCom's *ex parte* submissions in this proceeding.

² Although the Commission previously has stated that outputs of the synthesis model should not be used in assessing rates established for unbundled network elements, it has not suggested that specific inputs to the model are not relevant.

³ Bell Atlantic-Delaware v. McMahon, 80 F.Supp.2d 218, 236-239 (D.Del. 2000).

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In light of all of this evidence that a \$10.50 rate for unbundled switching far exceeds a TELRIC-based price, Verizon's Massachusetts application clearly should be rejected. At a minimum, the FCC must insist that Verizon's adoption of the \$10 placeholder rate for switching include the same terms and conditions that apply in the New York proceeding. That is, the New York rate is subject to refund based on the outcome of the cost proceeding that is currently being conducted by the New York commission. Just as Verizon will be obligated to revise its New York switching rate at the conclusion of that proceeding, it should also be obligated to revise its Massachusetts rate to conform to the revised New York rate. It is Verizon that chose to abandon in this 271 proceeding the switching rate that the Massachusetts DTE set and instead to rely on the New York rate. Having done so, Verizon should not be permitted to ignore a decision by the New York commission that revises that rate based on more complete cost information.

We recognize that the Massachusetts DTE currently is conducting a review of its initially approved rates for unbundled network elements. In contrast to New York, however, the DTE did not initiate this proceeding because of concerns that Verizon's existing rates may be excessive.⁴ Rather, the proceeding is simply the agency's previously scheduled five-year review of Verizon's rates for unbundled elements.

In contrast to every other section 271 application that the FCC has granted to date, the Commission has not had an opportunity to review a rate for unbundled switching approved by the relevant state commission, in this case Massachusetts, because Verizon chose not to rely on the switching rate of \$21.68 set by the DTE. Moreover, if the Commission were to approve this application, the FCC would not have an opportunity to review revisions to that rate that the DTE may make in its pending proceeding, unless a party were to file a complaint at the FCC, pursuant to the provisions of section 271. In effect, Verizon would be allowed to enter long distance in Massachusetts without this Commission having first reviewed any rate for unbundled switching that has been devised by the DTE. That result simply reverses the process set forth in section 271.

The Commission clearly can and should avoid this outcome. Specifically, in addition to requiring Verizon to revise its switching rate to conform to the outcome of the New York proceeding, the FCC should also require Verizon to submit the switching rate approved by the DTE in its proceeding for FCC review prior to putting that rate into effect in Massachusetts. This FCC review would not infringe on the state commission's authority to set rates for unbundled network elements within its jurisdiction. Rather, it would ensure that the FCC has an opportunity to review the state commission's action, as it has the responsibility under section 271 to do, and as it would have done if Verizon had relied on the DTE-set rate in this application.

While this letter focuses on problems with the switching rate in Massachusetts, WorldCom maintains its position that Massachusetts loop rates are not consistent with

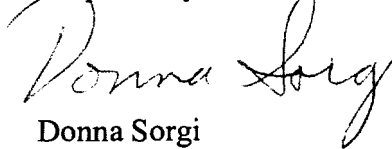
⁴ Indeed, as recently as February 6, 2001, the DTE certified to the FCC that its switching rate of \$21.68 was fully compliant with TELRIC principles. It is simply not possible for switching to cost \$4.17 in Texas and \$21.68 in Massachusetts.

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TELRIC standards. Significantly, copper distribution fill factors in Massachusetts were set at only 40%, which is little better than the 30% level that the Commission recently criticized in its Kansas/Oklahoma 271 order, and is inconsistent with the Commission's synthesis model as well as other states' determinations. This problem and others result in loop rates that should be reduced by \$5 per month in Massachusetts as explained in WorldCom's comments.

In accordance with section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, an original and one copy of this Notice are being filed with your office. In addition, a copy of this Notice and attachments is being transmitted by fax to Ann Berkowitz at Verizon as requested in the Commission's Public Notice.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Donna Sorgi".

Donna Sorgi

Attachment

cc (w/att.): Chairman Powell, Commissioner Ness, Commissioner Tristani, Commissioner Furchtgott-Roth, Kyle Dixon, Jordan Goldstein, Rebecca Beynon, Bryan Tramont, Sarah Whitesell, Dorothy Attwood, Michelle Carey, Rich Lerner, Eric Einhorn, Kathy Farroba, Susan Pie, Josh Walls, Cathy Carpino, Ann Berkowitz (by fax)

UNE-P Pricing in MA and States with 271 Approval or Where Competition Is Occurring

	<u>MA--DTE</u>	<u>MA--"NY"</u>	<u>NY</u>	<u>TX</u>	<u>PA</u>	<u>IL</u>	<u>MI</u>	<u>KS</u>	<u>OK</u>
Households (000)	2,376	2,376	5,973	5,117	3,398	3,574	3,050	851	1,029
Zone Density	100%	100%	100%	100%	100%	100%	100%	100%	100%
Revenue:									
Local	\$25.14	\$25.14	\$32.74	\$19.90	\$22.42	\$25.23	\$23.70	\$22.39	\$20.21
Access	<u>\$4.34</u>	<u>\$4.34</u>	<u>\$4.13</u>	<u>\$4.90</u>	<u>\$5.38</u>	<u>\$1.73</u>	<u>\$1.48</u>	<u>\$2.64</u>	<u>\$1.81</u>
Total Revenue (1)	\$29.48	\$29.48	\$36.87	\$24.80	\$27.80	\$26.96	\$25.18	\$25.03	\$22.02
Telco:									
Unbundled switch port	\$4.49	\$2.00	\$2.50	\$2.90	\$1.90	\$5.01	\$2.53	\$1.61	\$2.25
Unbundled loop	\$15.66	\$15.66	\$14.81	\$14.15	\$14.01	\$9.81	\$10.15	\$14.04	\$14.84
UNE switching & transport (2)	<u>\$21.68</u>	<u>\$10.50</u>	<u>\$10.60</u>	<u>\$4.17</u>	<u>\$5.02</u>	<u>\$1.25</u>	<u>\$1.97</u>	<u>\$4.23</u>	<u>\$5.47</u>
Total Telco (3)	\$41.83	\$28.16	\$27.91	\$21.22	\$20.93	\$16.07	\$14.65	\$19.88	\$22.57
Gross Margin (line/month)	(\$12.35)	\$1.32	\$8.96	\$3.58	\$6.87	\$10.89	\$10.53	\$5.15	(\$0.55)

1 BOC retail rates, without discount. Includes line fee, usage, 1 feature (1.5 in TX), and SLC.

2 MA--"NY" is calculated with "NY" switching rates as tariffed in MA.

3 Does not include Non-Recurring Charges (NRCs).

Note: Analysis does not include WorldCom or other CLEC internal costs (e.g., billing, customer service, sales/acquisition, bad debt)